Congress of the United States
Washington, DC 20515

September 17, 2024

Mathias Cormann
Secretary-General
Organization for Economic Co-operation and Development
2, rue André Pascal
75016 Paris

Dear Secretary-General Cormann:

One year ago, a congressional delegation led by Members of the U.S. House Committee on Ways and Means traveled to Paris to make clear to the Organization for Economic Co-operation and Development ("OECD") that the U.S. Congress will not consent to the global tax deal unilaterally negotiated by the Biden-Harris administration. We write today to renew our objections and express support for a lawsuit filed by the American Free Enterprise Chamber of Commerce in the Belgian Constitutional Court challenging the undertaxed profits rule ("UTPR"), which would surrender U.S. tax sovereignty, allowing unelected foreign bureaucrats to dictate tax policy, and help foreign governments arbitrarily extract hundreds of billions of dollars from the U.S. economy. The United States enacted a strong global minimum tax seven years ago, and the U.S. Congress will not replace that proven policy with the version pieced together in the OECD global tax deal. Implementation of the UTPR and other OECD policies would force the United States to forfeit $120 billion in revenue to foreign governments[1] while offering competitive advantages to China and others. Ultimately, the Biden-Harris administration lacks the authority to impose any tax deal on Americans without the approval of the U.S. Congress – doing so would violate the United States Constitution. For these reasons, we continue to oppose the OECD global tax deal and support the efforts underway in the Belgian Constitutional Court to block implementation.

The United States Constitution expressly grants the taxing power to Congress, not to the President.[2] Specifically, the U.S. Constitution requires that "[a]ll bills for raising revenue shall originate in the House of Representatives."[3] This constitutional structure makes the Committee on Ways and Means, the tax-writing committee in the U.S. House of Representatives, the *only* entity where changes in U.S. tax law may originate. Thus, the Biden-Harris administration's unilateral negotiations without consultation with Congress constitutes a major overstep of its authority, with dire consequences for American workers and businesses.

The UTPR is fundamentally flawed, and it will never be effective against companies backed by entities such as the Chinese Communist Party ("CCP"). China will exploit the OECD global tax deal's loophole for direct government subsidies, which are a hallmark of Chinese economic activity. Other countries will likely do the same, thwarting the OECD's stated purpose

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[1] *Possible Effects of Adopting The OECD's Pillar Two, Both Worldwide and In The United States*, Prepared by the Staff of the Joint Comm. on Taxation (June 2023), https://www.jct.gov/publications/2023/oecd-pillar-two-report-june-2023/
[2] U.S. Const. art. I, § 8, cl. 1.
[3] U.S. Const. art. I, § 7, cl. 1.

of ensuring a minimum level of taxation. Ultimately, the UTPR will target U.S. workers and businesses by allowing foreign governments to claw back important U.S. tax incentives (e.g., tax credits for research and development and low-income housing) and attack the operations of American companies in third-party jurisdictions.

The United States has already implemented a strong global minimum tax. Global intangible low-taxed income ("GILTI"), has proved an effective mechanism to prevent abusive tax practices by multinational corporations. We recognize the sovereign right of countries to adopt tax rules for their own companies and for activities within their own borders. We also welcome countries' efforts to enact their own GILTI-type global minimum taxes. Regrettably, the UTPR and other policies envisioned in the OECD global tax deal fail to adequately respect GILTI as the first and only proven global minimum tax in the world, which allows foreign governments to unfairly target Americans.

To date, less than half of the world's economy has even considered implementing the OECD global tax deal. And even if a country like China were to move forward, there is no assurance that the CCP would play by the rules. For instance, last year it was reported that the Chinese government instructed state-owned companies to phase out their use of the big four accounting firms to address security concerns and Western influence.[4] They were instead instructed to use auditors local to China and Hong Kong, subject to the control of the CCP.[5] The UTPR and other aspects of the OECD global tax deal depend on transparent corporate financial reporting and home jurisdictions ensuring accurate and honest compliance. This system, however, is wholly inadequate to police a jurisdiction where the State, businesses, and auditors conspire to obscure information and avoid global minimum tax rules. Under the OECD global tax deal, bad actors are rewarded while American workers and businesses are in the crosshairs.

The U.S. Congress remains opposed to the unfair and unworkable OECD global tax deal. Should foreign governments seek to target Americans through the UTPR or other mechanisms in the OECD global tax deal, we will be forced to pursue countermeasures.[6] We encourage and support all efforts to preserve countries' tax sovereignty and to block implementation of unfair rules like the UTPR, including the most recent challenge filed in the Belgian Constitutional Court.

Sincerely,

Jason Smith
Chairman
Committee on Ways and Means

Mike Johnson
Speaker of the House

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[4] Kalyeena Makortoff, *China instructs state firms to phase out big four auditors*, THE GUARDIAN (Feb. 22, 2023), https://www.theguardian.com/world/2023/feb/22/china-instructs-state-firms-to-phase-out-big-four-auditors.
[5] *Id.*
[6] Defending American Jobs and Investment Act, H.R. 3665, 118th Cong. § 1 (2023); Unfair Tax Prevention Act, H.R. 4695, 118th Cong. § 1 (2023).

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